

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DURRELL ANTHONY PUCKETT,
Plaintiff,
v.
HEATH, et al.,
Defendants.

No. 2:22-cv-0476-DJC-CKD P

ORDER

Plaintiff is a state prisoner proceeding without an attorney in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff's motions and requests seeking various relief are before the court. (ECF Nos. 81, 82, 84.) As set forth below, the court will deny plaintiff's motions and requests, but plaintiff may renew the request to substitute parties in the manner specified below. The court will vacate the current pretrial motion deadline of July 9, 2025, and will set a further schedule for this case at a later date.

ECF No. 81

Plaintiff requests the court substitute Sgt. Pablo for Jane Doe and to proceed immediately to trial. (ECF No. 81.) The operative complaint is the second amended complaint filed on May 26, 2022. (ECF No. 10.) Under the amended discovery and scheduling order, discovery closed on April 9, 2025, and pretrial motions were due July 9, 2025. (ECF No. 70.) The deadline for filing dispositive motions has not yet expired, and plaintiff's request to proceed immediately to trial will

1 be denied.

2 Previously, the court denied plaintiff's motion to amend the complaint without prejudice
3 to renewal once plaintiff identified the real name of the Jane Doe Sergeant in the second amended
4 complaint. (ECF No. 80.) The court will deny without prejudice the current request to substitute
5 Sgt. Pablo for Jane Doe, however, plaintiff may renew the requested relief as to substitution of a
6 party in the manner set forth below. See Fed. R. Civ. P. 15 & 16(b)(4).

7 Under Local Rule 137(c), if filing a document such as an amended complaint requires the
8 court's permission, the document proposed to be filed should be attached as an exhibit to the
9 motion. This court's local rules further provide that every amended pleading shall be complete in
10 itself without reference to another pleading. See Local Rule 220. Accordingly, within 30 days of
11 the date of this order, plaintiff may file a single motion for relief seeking to substitute Sgt. Pablo
12 for Jane Doe along with a proposed amended complaint substituting Sgt. Pablo for Jane Doe and
13 containing no other changes.

14 The court will vacate the current pretrial motion deadline of July 9, 2025. The court will
15 set a further schedule for this case after ruling on plaintiff's motion to amend or expiration of time
16 for plaintiff to file the motion as directed.

17 ECF No. 82

18 Plaintiff has also filed a document titled "Pre-Trial Statement" in which plaintiff requests
19 the court appoint counsel. (ECF No. 82.) In light of the current procedural posture of this case, the
20 court will disregard the pretrial statement as prematurely filed and deny without prejudice the
21 request for appointment of counsel. If this case proceeds to trial, then further deadlines including
22 for filing pretrial statements will be set at that time.

23 District courts lack authority to require counsel to represent indigent prisoners in section
24 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional
25 circumstances, the court may request an attorney to voluntarily represent such a plaintiff. See 28
26 U.S.C. § 1915(e)(1); Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.
27 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether "exceptional
28 circumstances" exist, the court must consider plaintiff's likelihood of success on the merits as

1 well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the
2 legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not
3 abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional
4 circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of
5 legal education and limited law library access, do not establish exceptional circumstances that
6 warrant a request for voluntary assistance of counsel. Having considered the factors under
7 Palmer, the court finds that plaintiff has failed to meet his burden of demonstrating exceptional
8 circumstances warranting the appointment of counsel at this time.

9 ECF No. 84

10 Finally, plaintiff has filed a document titled, in part, “Permanent Retraining Order” in
11 which plaintiff lists various events that have allegedly occurred since November 2024, and states
12 generally without any specific details that he has been assaulted and sexually assaulted and fears
13 for his safety. (ECF No. 84.) Plaintiff might be attempting to seek a restraining order or
14 preliminary injunction requiring defendants to take or cease certain actions, but it is unclear what
15 specific relief plaintiff is seeking or any connection it would have to the issues and defendants in
16 this case. In order to obtain some specific injunctive relief, plaintiff must file a properly supported
17 motion clearly stating the relief sought and demonstrating he is entitled to it under the appropriate
18 legal standard.¹ To any extent plaintiff is seeking preliminary injunctive relief through this filing,
19 the request is denied without prejudice.

20 In accordance with the above, IT IS HEREBY ORDERED as follows:

- 21 1. Plaintiff’s request to substitute parties (ECF No. 81) is DENIED without prejudice.
- 22 2. Within 30 days of the date of this order, plaintiff may file a single motion for relief
23 seeking to substitute Sgt. Pablo for Jane Doe along with a proposed amended
24 complaint substituting Sgt. Pablo for Jane Doe and containing no other changes.

25 _____
26 ¹ The court has previously advised plaintiff of the standards for obtaining a preliminary injunction
27 and the need to submit evidence in support of such a motion. See Puckett v. Lynch, No. 2:23-CV-
28 0903-KJM-SCR P, 2024 WL 5231228, at *1 (E.D. Cal. Dec. 27, 2024), report and
recommendation adopted, No. 2:23-CV-0903 KJM SCR P, 2025 WL 436917 (E.D. Cal. Feb. 7,
2025).

3. Plaintiff's Pretrial Statement (ECF No. 82) is disregarded as prematurely filed and the request for appointment of counsel is DENIED without prejudice.
4. To any extent plaintiff seeks relief through the document titled "Permanent Restraining Order..." (ECF No. 84) the request is DENIED without prejudice.
5. The court vacates the pretrial motion deadline of July 9, 2025, and will re-set a further schedule for this case at a later date.

Dated: May 7, 2025



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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